

AMENDED IN ASSEMBLY APRIL 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 245**

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**Introduced by Assembly Member Cunneen**  
*(Coauthors: Assembly Members Leach, Oller, Robert Pacheco, and Zettel)*

February 1, 1999

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An act to amend Sections 12022, 12022.5, and 12022.9 of, and to repeal Section 12022.55 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 245, as amended, Cunneen. Sentencing.

(1) Under existing law, any person who is armed with a firearm, or personally uses a deadly or dangerous weapon, in the commission or attempted commission of a felony shall, upon conviction, be punished by an additional term of one year, except as specified.

This bill would increase the term of imprisonment for these sentence enhancements to one, 2, or 3 years if the person is armed with a firearm, and 3, 4, or 5 years if the person personally uses a deadly or dangerous weapon, in the commission or attempted commission of a felony.

(2) Existing law, as recently interpreted by the California Supreme Court, provides that imposition of a sentencing enhancement for personal use of a firearm is mandatory where the underlying offense is assault with a firearm. Existing law, also as interpreted by the California Supreme

Court, further provides that the court has no authority to strike a sentencing enhancement for personal use of a firearm.

This bill would make conforming changes consistent with these decisions of the California Supreme Court, and would provide that these changes are intended to be declaratory of existing law.

~~(3) Existing law provides that any person who, during the commission or attempted commission of a felony, knows or reasonably should know that the victim is pregnant, and who, with intent to inflict injury, and without the consent of the woman, personally inflicts injury upon a pregnant woman that results in the termination of the pregnancy shall be punished by an additional term of imprisonment in the state prison for 5 years.~~

~~This bill would, for purposes of this provision, delete the requirement that the person act with the intent to inflict injury.~~

~~(4)~~ This bill would make technical changes that consolidate other provisions of law or delete language that is duplicative of other provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12022 of the Penal Code is  
2 amended to read:  
3 12022. (a) (1) Except as provided in subdivision (c),  
4 any person who is armed with a firearm in the commission  
5 or attempted commission of a felony shall, in addition and  
6 consecutive to the punishment prescribed for the offense  
7 of which the person has been convicted, be punished by  
8 an additional term of imprisonment in the state prison for  
9 one, two, or three years, unless the arming is an element  
10 of that offense. This additional term shall apply to any  
11 person who is a principal in the commission or attempted  
12 commission of a felony if one or more of the principals is  
13 armed with a firearm, whether or not the person is  
14 personally armed with a firearm.



1 (2) Except as provided in subdivision (c), if the  
2 firearm is an assault weapon, as defined in Section 12276,  
3 or a machinegun, as defined in Section 12200, the  
4 additional term described in this subdivision shall be  
5 three years whether or not the arming is an element of  
6 the offense of which the person was convicted. The  
7 additional term provided in this paragraph shall apply to  
8 any person who is a principal in the commission or  
9 attempted commission of a felony if one or more of the  
10 principals is armed with an assault weapon or  
11 machinegun whether or not the person is personally  
12 armed with an assault weapon or machinegun.

13 (b) Any person who personally uses a deadly or  
14 dangerous weapon in the commission or attempted  
15 commission of a felony shall, in addition and consecutive  
16 to the punishment prescribed for the offense of which the  
17 person has been convicted, be punished by an additional  
18 term of imprisonment in the state prison for three, four,  
19 or five years, unless use of a deadly or dangerous weapon  
20 is an element of that offense.

21 When a person is found to have personally used a  
22 deadly or dangerous weapon in the commission or  
23 attempted commission of a felony as provided in this  
24 subdivision and the weapon is owned by that person, the  
25 court shall order that the weapon be deemed a nuisance  
26 and disposed of in the manner provided in Section 12028.

27 (c) Notwithstanding the enhancement set forth in  
28 subdivision (a), any person who is personally armed with  
29 a firearm in the commission or attempted commission of  
30 a violation of Section 11351, 11351.5, 11352, 11366.5,  
31 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the  
32 Health and Safety Code, shall, in addition and  
33 consecutive to the punishment prescribed for that  
34 offense of which the person has been convicted, be  
35 punished by an additional term of imprisonment in the  
36 state prison for three, four, or five years.

37 (d) For the enhancements provided in this section,  
38 the court shall impose the middle term unless there are  
39 circumstances in aggravation or mitigation. The court



1 shall state the reasons for its enhancement choice on the  
2 record at the time of sentencing.

3 SEC. 2. Section 12022.5 of the Penal Code is amended  
4 to read:

5 12022.5. (a) Except as provided in subdivision (b),  
6 any person who personally uses a firearm in the  
7 commission or attempted commission of a felony shall, in  
8 addition and consecutive to the punishment prescribed  
9 for the offense of which the person has been convicted,  
10 be punished by an additional term of imprisonment in the  
11 state prison for 3, 4, or 10 years, unless use of a firearm is  
12 an element of that offense.

13 (b) Notwithstanding subdivision (a), any person who  
14 personally uses an assault weapon, as specified in Section  
15 12276, or a machinegun, as defined in Section 12200, in the  
16 commission or attempted commission of a felony, shall, in  
17 addition and consecutive to the sentence prescribed for  
18 the offense of which the person has been convicted, be  
19 punished by an additional term of imprisonment in the  
20 state prison for 5, 6, or 10 years.

21 (c) For the enhancements provided in this section, the  
22 court shall impose the middle term unless there are  
23 circumstances in aggravation or mitigation. The court  
24 shall state the reasons for its enhancement choice on the  
25 record at the time of sentencing.

26 (d) The additional term provided by this section shall  
27 be imposed in cases of assault with a firearm under  
28 Section 245, or assault with a deadly weapon with a  
29 firearm under Section 245, or murder if the killing was  
30 perpetrated by means of shooting a firearm from a motor  
31 vehicle, intentionally at another person outside of the  
32 vehicle with the intent to inflict great bodily injury or  
33 death.

34 (e) When a person is found to have personally used a  
35 firearm, an assault weapon, or a machinegun in the  
36 commission or attempted commission of a felony as  
37 provided in this section and the firearm, assault weapon,  
38 or machinegun is owned by that person, the court shall  
39 order that the firearm be deemed a nuisance and  
40 disposed of in the manner provided in Section 12028.



1 (f) Notwithstanding Section 1385 or any other  
2 provision of law, the court shall not strike any allegation,  
3 admission, or finding under this section.

4 SEC. 3. Section 12022.55 of the Penal Code is  
5 repealed.

6 SEC. 4. Section 12022.9 of the Penal Code is amended  
7 to read:

8 12022.9. Any person who, during the commission or  
9 attempted commission of a felony, knows or reasonably  
10 should know that the victim is pregnant, and who, *with*  
11 *intent to inflict injury, and* without the consent of the  
12 woman, personally inflicts injury upon a pregnant woman  
13 that results in the termination of the pregnancy shall, in  
14 addition and consecutive to the punishment prescribed  
15 for the offense of which the person has been convicted,  
16 be punished by an additional term of imprisonment in the  
17 state prison for five years.

18 Nothing in this section shall be construed as affecting  
19 the applicability of subdivision (a) of Section 187 of the  
20 Penal Code.

21 SEC. 5. (a) In repealing the enhancement in  
22 paragraph (2) of subdivision (b) of Section 12022 of the  
23 Penal Code, in Section 1 of this act, the Legislature  
24 recognizes that the conduct punished under that  
25 provision will be subject to punishment under the  
26 amended general provision of subdivision (b) of Section  
27 12022 of the Penal Code.

28 (b) In repealing the enhancement in subdivision (d)  
29 of Section 12022 of the Penal Code, in Section 1 of this act,  
30 the Legislature recognizes that the conduct punished  
31 under that provision will be subject to punishment under  
32 the amended general provision of subdivision (a) of  
33 Section 12022 of the Penal Code.

34 (c) The repeal of those provisions of Section 12022 of  
35 the Penal Code described in subdivisions (a) and (b) shall  
36 not be given any retroactive application, and shall not be  
37 construed to benefit any person who committed a crime  
38 or received an enhancement or any other punishment  
39 while those provisions were in effect.



1 SEC. 6. In repealing the specific provisions of  
2 subdivision (e) of Section 12022 of the Penal Code, in  
3 Section 1 of this act, and subdivision (f) of Section 12022.5  
4 of the Penal Code, in Section 2 of this act, it is not the  
5 intent of the Legislature to alter the application of the  
6 general provision of subdivision (f) of Section 1170.1 of  
7 the Penal Code to the enhancements provided in those  
8 sections.

9 SEC. 7. In repealing subdivision (f) of Section 12022  
10 of the Penal Code, in Section 1 of this act, it is not the  
11 intent of the Legislature to alter the existing authority  
12 and discretion of the court to strike the enhancements or  
13 to strike the additional punishment for the enhancements  
14 provided in that section pursuant to Section 1385 of the  
15 Penal Code.

16 SEC. 8. (a) In repealing the enhancement in  
17 paragraph (2) of subdivision (a) of Section 12022.5 of the  
18 Penal Code, in Section 2 of this act, the Legislature  
19 recognizes that the conduct punished under that  
20 provision is now subject to greater punishment under  
21 subdivision (b) of Section 12022.53 of the Penal Code.

22 (b) In repealing the enhancement in paragraph (1) of  
23 subdivision (b) of Section 12022.5 of the Penal Code, in  
24 Section 2 of this act, the Legislature recognizes that the  
25 conduct punished under that provision is now subject to  
26 greater punishment under subdivision (d) of Section  
27 12022.53 of the Penal Code.

28 (c) In repealing the enhancement in subdivision (c) of  
29 Section 12022.5 of the Penal Code, in Section 2 of this act,  
30 the Legislature recognizes that the conduct punished  
31 under that provision is now subject to the same  
32 punishment under subdivision (a) of Section 12022.5 of  
33 the Penal Code.

34 (d) The repeal of those provisions of Section 12022.5 of  
35 the Penal Code described in subdivisions (a), (b), and (c)  
36 shall not be given any retroactive application, and shall  
37 not be construed to benefit any person who committed  
38 a crime or received an enhancement or any other  
39 punishment while those provisions were in effect.



1 SEC. 9. The amendments to subdivision (d) of  
2 Section 12022.5 of the Penal Code, in Section 2 of this act,  
3 are intended to be declaratory of existing law, and to  
4 conform the language of the statute to the decision of the  
5 California Supreme Court in *People v. Ledesma* (1997)  
6 16 Cal.4th 90.

7 SEC. 10. The amendments to subdivision (f) of  
8 Section 12022.5 of the Penal Code, in Section 2 of this act,  
9 to prohibit striking the enhancement, are intended to be  
10 declaratory of existing law as contained in *People v.*  
11 *Thomas* (1992) 4 Cal.4th 206, and *People v. Ledesma*  
12 (1997) 16 Cal.4th 90.

13 SEC. 11. In repealing Section 12022.55 of the Penal  
14 Code, in Section 3 of this act, the Legislature recognizes  
15 that the conduct punished under that provision is now  
16 subject to greater punishment under subdivision (d) of  
17 Section 12022.53 of the Penal Code. The repeal of Section  
18 12022.55 of the Penal Code shall not be given any  
19 retroactive application, and shall not be construed to  
20 benefit any person who committed a crime or received  
21 an enhancement or any other punishment while that  
22 provision was in effect.

23 SEC. 12. In repealing the specific provision relating to  
24 pleading the enhancement in subdivision (a) of Section  
25 12022.9 of the Penal Code, in Section 4 of this act, it is not  
26 the intent of the Legislature to alter the application of the  
27 general provision of subdivision (e) of Section 1170.1 of  
28 the Penal Code to the enhancement provided in that  
29 section.

30 SEC. 13. In repealing the enhancements in  
31 paragraphs (1) and (2) of subdivision (b) of Section  
32 12022.9 of the Penal Code, in Section 4 of this act, the  
33 Legislature recognizes that the conduct punished under  
34 those provisions is now subject to greater punishment  
35 under subdivision (d) of Section 12022.53 of the Penal  
36 Code. The repeal of those provisions of Section 12022.9 of  
37 the Penal Code shall not be given any retroactive  
38 application, and shall not be construed to benefit any  
39 person who committed a crime or received an



1 enhancement or any other punishment while those  
2 provisions were in effect.

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